

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CASE NO. 23SC188947
	:	
DONALD JOHN TRUMP,	:	Judge: Scott McAfee
	:	
Defendant.	:	

**NOTICE OF SUPPLEMENTAL AUTHORITY ON RIPENESS OF
PRETRIAL FIRST AMENDMENT AS-APPLIED CHALLENGE**

President Trump hereby notifies the Court and the prosecution of supplemental authority on the issue of ripeness of defendants’ First Amendment as-applied challenge*. That authority is: *Hall v. State*, 268 Ga. 89 (1997). The Georgia Supreme Court in *Hall* granted an application for interlocutory appeal to consider a pretrial constitutional as-applied vagueness issue. The Court first noted that the underlying facts had not been fully developed because the matter was being reviewed following the trial court's denial of appellant motion to quash. Then in footnote 2, the Court addressed the ripeness of pretrial constitutional as-applied challenges:

Relying upon *United States v. National Dairy Products Corp.*, 372 U.S. 29, 83 S.Ct. 594, 9 L.Ed.2d 561 (1963), the dissent urges that in considering Hall's vagueness challenge, we are limited to the

* President Trump respectfully alerts this Court that he intends to file his own First Amendment challenge prior to the due date for filing pretrial motions.

allegations of fact appearing in the indictment. The *National Dairy* opinion, however, states clearly that in cases such as this one, the statutory vagueness challenge is to be examined “in light of the *conduct* to which it is applied.” 372 U.S. at 36, 83 S.Ct. at 600. In applying this precedent here, we refer only to those few facts, uncontested by Hall, that are put forth by the State in support of its accusations that by her conduct, Hall violated OCGA § 16–5–60. Furthermore, we note that the accusations in this case set forth no factual allegations, but rather contain only conclusions. Thus, were we to follow the dissent's logic, we would be precluded from considering Hall's vagueness challenge. Furthermore, under the dissent's reasoning, the State could avoid all vagueness challenges simply by withholding allegations of fact from its indictments.

In its order denying the motions to dismiss under the Supremacy Clause and First Amendment filed by co-defendants Chesebro and Powell, this Court held that it was barred from considering their pretrial First Amendment as-applied challenge, citing a litany of cases for the proposition that such a challenge “necessarily requires the development of a factual record for the court to consider.” Order at 5. This Court then stated that in our case, the facts are “vigorously disputed” and it “has not located nor been provided with any authority that a charging document alone can substitute for a traditional evidentiary record.” Order at 6.

President Trump submits that *Hall* authorizes this Court to entertain a pretrial First Amendment as-applied challenge on the facts set forth in the indictment, to the extent such averments are undisputed by the defendants. Here, the indictment’s recitation of supposedly “false” statements and facts, undisputed solely for purposes of a First Amendment-based general demurrer/motion to dismiss, show that the

prosecution of President Trump is premised on content-based core political speech and expressive conduct protected by the First Amendment[†]. See *United States v. Alvarez*, 567 U.S. 709, 727 (2012) (plurality opinion) (“The remedy for speech that is false is speech that is true. This is the ordinary course in a free society. The response to the unreasoned is the rational; to the uninformed, the enlightened; to the straightout lie, the simple truth.”). The remedy is not a state RICO prosecution against the former President of the United States.

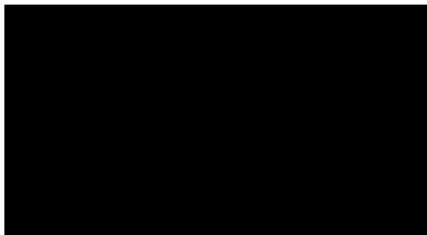
Respectfully submitted,

Steven H. Sadow

STEVEN H. SADOW

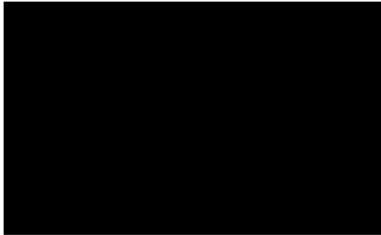
Georgia Bar No. 622075

Lead Counsel for Defendant



[†] Count 1 RICO conspiracy - Overt Acts 1, 5, 7-9, 14, 17, 19, 22, 26-27, 28, 30-32, 40, 42-44, 75, 90, 93, 95, 97, 100-101, 106-108, 112-114, 123, 128, 130-133, 135, 138-140 and 156-157. Counts 5, 9, 11, 13, 15, 17, 19, 27-29 and 38-39. All the alleged overt acts and counts, except acts 156-157 and counts 38-39, are claimed to have taken place during President Trump’s term in office. Alleged overt acts 156-157 and counts 38-39, which relate to the same political speech and expressive conduct, are alleged to have occurred on September 17, 2021.

Jennifer L. Little
Jennifer L. Little
Georgia Bar No. 141596
Counsel for Defendant



CERTIFICATE OF SERVICE

I hereby certify I electronically filed the foregoing document with the Clerk of Court using Odyssey Efile Georgia electronic filing system that will send notification of such filing to all parties of record.

This 27th day of November, 2023.

/s/ Steven H. Sadow
STEVEN H. SADOW